



SHELLEY MOORE CAPITO  
2ND DISTRICT, WEST VIRGINIA

COMMITTEE ON FINANCIAL SERVICES  
RANKING MEMBER  
SUBCOMMITTEE ON HOUSING AND  
COMMUNITY OPPORTUNITY

COMMITTEE ON TRANSPORTATION  
AND INFRASTRUCTURE

SELECT COMMITTEE ON ENERGY INDEPENDENCE  
AND GLOBAL WARMING

Congress of the United States  
House of Representatives

Washington, D.C. 20515-4802

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2443 RAYBURN H.O.B.  
WASHINGTON, DC 20515-4802  
202-225-2711

4815 MACCORKLE AVE.  
CHARLESTON, WV 25304  
304-925-5964

300 FOXCROFT AVE.  
SUITE 102  
MARTINSBURG, WV 25401  
304-264-8810

[WWW.HOUSE.GOV/CAPITO](http://WWW.HOUSE.GOV/CAPITO)

Ms. Lisa Jackson  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

Dear Administrator Jackson,

I am writing to express my deep concern regarding the recent announcement by the Environmental Protection Agency to further delay mining operations across the Appalachian region.

On June 11, 2009, the Environmental Protection Agency (EPA), Department of Interior and Army Corps of Engineers (Corps) announced a Memorandum of Understanding (MOU) to implement an Interagency Action Plan on mountaintop coal mining. Since then, I have met with both the EPA and Corps to discuss the details of the MOU and relay how the consequences of inaction fall on the backs of miners and mining communities in West Virginia. In those meetings, the EPA and Corps reassured me that they would work with the industry and state agencies to quickly resolve any issues with the pending permits subject to the MOU.

The September 30, 2009 announcement by the EPA is a direct contradiction to those discussions. While understanding there would be additional evaluation, I was also told that all pending mining permits subject to the MOU, 23 of which are located in West Virginia, would be reviewed expediently. During discussions in my office, the EPA stated that the Corps ultimately has final decision making authority of Clean Water Act (CWA) Section 404 permits. Regarding that statement, what role will EPA play in the present decision making process? If the Corps determines that projects are in compliance with Section 404 of the CWA and authorizes the permits without the authority of the EPA, what would be the next step in the application process? Would EPA have final veto authority of pending permits? It's certainly appropriate to have legitimate oversight and review of all proposed permits, but the EPA's most recent statement is only the latest in a series which have created uncertainty and ambiguity for mines across our state and region.

Simply put, I remain skeptical of the EPA's announcement. It is unclear what standard the EPA is intending to employ when making a decision. For example, although EPA is forwarding the permits back to the Corps, EPA will continue to oversee the process with Corps as it moves forward. Moreover, since the September 30<sup>th</sup> announcement, have any of the 79 permits entered into the 60-day coordination period? How will Members of Congress be notified of any future

developments? I respect the work of the EPA, but the agency's actions signal an erratic and inconsistent pattern regarding the review of permit applications. Specifically, it remains unclear if or when there will ever be a resolution to this process.

Our nation depends on West Virginia coal as a domestic resource to power our economy and we can't afford never-ending delay and uncertainty. Concerning those permits that have been submitted since March 31, 2009, how are EPA and the Corps processing the permit applications? Of those, how many applications are currently pending in the Corps Huntington District office? Has EPA objected to any of these pending permits or requested additional information?

Essentially, by singling out these permits and repeatedly calling for additional review the EPA is jeopardizing jobs and economic growth throughout the state and region. Further delay of mining permits creates enormous uncertainty that's forcing mines to delay investment, halt production and lay off workers across the region. It is imperative that the EPA clarify the process for approving or rejecting permits – hard working West Virginians depend on it.

In review of the urgency of this matter, I would appreciate your prompt response.

Sincerely,



SHELLEY MOORE CAPITO  
Member of Congress

cc: The White House  
U.S. Army Corps of Engineers  
U.S. Army Corps of Engineers, Huntington District